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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Luosheng Peng

#5

Application No.: 09/776,165

Group Art Unit: 2154

Filed: February 1, 2001

Examiner: To be assigned

For: APPARATUS AND METHODS
FOR OPTIMIZING TRAFFIC
VOLUME IN WIRELESS EMAIL
COMMUNICATION

Attorney Docket No.: 10480-003-999

REQUEST UNDER 37 C.F.R. § 1.36 AND §10.40(c)
FOR WITHDRAWAL OF ATTORNEY

Assistant Commissioner for Patents
U.S. Patent and Trademark Office
P.O. Box 2327
Arlington, VA 22202

Sir:

It is hereby requested that the attorneys who have appeared in the above-identified patent application, and whose names appear below, be permitted to withdraw as attorneys in accordance with 37 C.F.R. §§ 1.36 and 10.40(c). It is respectfully requested that this Request be approved for the reasons stated herein.

The undersigned attorney has authorization and submits this Request on behalf of the following individuals:

S. Leslie Misrock (Reg. No. 18872), Berj A. Terzian (Reg. No. 20060), David Weild, III (Reg. No. 21094), Jonathan A. Marshall (Reg. No. 24614), Barry D. Rein (Reg. No. 22411), Stanton T. Lawrence, III (Reg. No. 25736), Charles E. McKenney (Reg. No. 22795), Philip T. Shannon (Reg. No. 24278), Francis E. Morris (Reg. No. 24615), Charles E. Miller (Reg. No. 24576), Gidon D. Stern (Reg. No. 27469), John J. Lauter, Jr. (Reg. No. 27814), Brian M. Poissant (Reg. No. 28462), Brian D. Coggio (Reg. No. 27624), Rory J. Radding (Reg. No. 28749), Stephen J. Harbulak (Reg. No. 29166), Donald J. Goodell (Reg. No. 19766), James N. Palik (Reg. No. 25510), Thomas E. Friebel (Reg. No. 29258), Laura A.

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Coruzzi (Reg. No. 30742), Jennifer Gordon (Reg. No. 30753), Allan A. Fanucci (Reg. No. 30256), Geraldine F. Baldwin (Reg. No. 31232), Victor N. Balancia (Reg. No. 31231), Samuel B. Abrams (Reg. No. 30605), Steven I. Wallach (Reg. No. 35402), Marcia H. Sundeen (Reg. No. 30893), Paul J. Zegger (Reg. No. 33821), Edmond R. Bannon (Reg. No. 32110), Bruce J. Barker (Reg. No. 33291), Adriane M. Antler (Reg. No. 32605), Thomas G. Rowan (Reg. No. 34419), James G. Markey (Reg. No. 31636), Thomas D. Kohler (Reg. No. 32797), Scott D. Stimpson (Reg. No. 33607), Gary S. Williams (Reg. No. 31066), William S. Galliani (Reg. No. 33885), Ann L. Gisolfi (Reg. No. 31956), Todd A. Wagner (Reg. No. 35399), Scott B. Familant (Reg. No. 35514), Kelly D. Talcott (Reg. No. 39582), Francis D. Cerrito (Reg. No. 38100), Anthony M. Insogna (Reg. No. 35203), Brian M. Rothery (Reg. No. 35340), Brian D. Siff (Reg. No. 35679), and Alan Tenenbaum (Reg. No. 34939), all of Pennie & Edmonds LLP, whose addresses are 1155 Avenue of the Americas, New York, New York 10036, 1667 K Street N.W., Washington, DC 20006 and 3300 Hillview Avenue, Palo Alto, CA 94304, all of Pennie & Edmonds LLP (PTO Customer No. 24341), as its attorneys to prosecute this application and to transact all business in the United States Patent and Trademark Office connected therewith, said appointment to be to the exclusion of the inventors and their attorney(s) in accordance with the provisions of 37 C.F.R. 3.71, provided that, if any one of these attorneys ceases being affiliated with the law firm of Pennie & Edmonds LLP as partner, counsel, or employee, then the appointment of that attorney and all powers derived therefrom shall terminate on the date such attorney ceases being so affiliated.

REMARKS

The Commissioner usually requires that there be "at least thirty days between approval of the withdrawal and the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 C.F.R. § 1.136(a)." M.P.E.P. § 402.06. In the present application, to the best knowledge of the undersigned, there is no outstanding paper from the Patent and Trademark Office to which a reply is due. In view of the foregoing, the attorneys requesting withdrawal respectfully request approval of the present petition to withdraw at once.

The facts that support this request for withdrawal are as set forth below.

The instant application names Luosheng Peng as the inventor.

Our client, a corporate entity known as DoOnGo Technologies, Inc. (hereinafter referred to as "Client"), retained the undersigned, *inter alia*, to prepare and prosecute the instant application. The instant application was filed on February 1, 2001, with an executed Power of Attorney which named the attorneys herein, *i.e.*, those individuals now requesting withdrawal. The instant application was assigned to DoOnGo Technologies, Inc. by assignment of the inventor recorded at Reel 011553, Frame 0694 on February 1, 2001.

Pursuant to 37 C.F.R. § 1.36, an attorney or agent may withdraw upon application to and approval by the Commissioner. Further, 37 C.F.R. § 10.40(a) states that a practitioner shall not withdraw without permission from the United States Patent and Trademark Office until the practitioner has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of another practitioner, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules. Under 37 C.F.R. § 10.40(c), permissive withdrawal is permitted, *inter alia*, when the client has failed to pay one or more bills for an unreasonable period of time.

The undersigned and the attorneys named herein are seeking permissive withdrawal under 37 C.F.R. § 10.40(c), for failure to pay one or more bills, rendered by the undersigned, for an unreasonable period of time. Client has been and is presently in arrears for several invoices dating back to February 12, 2001. To date, Client has accumulated an unpaid balance of \$85,360.31. On or about October 5, 2001, Client's account was turned over to a collection agency in attempt to secure payment of the outstanding balance. As shown above, Client has failed for an unreasonable period of time to pay for professional services rendered in connection with the instant application. The payment policy of the attorneys requesting withdrawal is that all statements are due when rendered. No credit is given. Therefore, it is unreasonable to fail to pay for bills that are due when payable.

Throughout the prosecution of the present application, Client has been provided with copies of all papers filed on their behalf by the undersigned attorneys, and all papers issued by the Patent and Trademark Office in connection with the above-identified application. In addition, the original prosecution file for the instant application will be shipped to Mr. Steven Artim, Chief Executive Officer of Client, at the Client (2065 Martin

Avenue, Suite 108, Santa Clara, CA 95050) by overnight courier upon approval of this Request. Mr. Artim will be notified of this shipment by certified mail in advance.

Client has been advised of the undersigned's intent to withdraw by letter dated October 19, 2001. The undersigned attorney is providing a copy of this Request to Client. As shown above, reasonable steps have been taken to avoid foreseeable prejudice to the rights of the Client, owner of the application.

CONCLUSION

For the foregoing reasons, this Request to Withdraw meets the criteria of 37 C.F.R. §§ 1.36 and 10.40(c) and should be approved. In sum, Client has failed to pay one or more bills for an unreasonable period of time; and in accordance with 37 C.F.R. § 10.40(a), Client has been given due notice of the withdrawal; will receive copies of all papers and property to which it is entitled; and has been given sufficient time to employ another practitioner.

It is respectfully requested that this Request to Withdraw be granted at the earliest convenience of the United States Patent and Trademark Office, and in any event, no later than January 15, 2002.

As required, an original and two copies of this Request are being filed herewith. No fee is believed to be due in connection with filing of the instant request. However, if a fee is due, please charge the required fee to Pennie & Edmonds LLP Deposit Account No. 16-1150.

Respectfully submitted,

Date November 28, 2001

by Thomas E. Friebel Reg. No. 29,258 40,203
Thomas E. Friebel (Reg. No.)

PENNIE & EDMONDS LLP
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New York, New York 10036-2711
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Enclosure (two copies of this request)